

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

KPM ANALYTICS NORTH AMERICA CORPORATION,

Plaintiff,

V.

BLUE SUN SCIENTIFIC, LLC; THE INNOVATIVE TECHNOLOGIES GROUP & CO., LTD; ARNOLD EILERT; MICHELLE GAJEWSKI; ROBERT GAJEWSKI; RACHAEL GLENISTER; GREGORY ISRAELSON; IRVIN LUCAS; and PHILIP OSSOWSKI,

Defendants.

Civil Action No. 4:21-cv-10572-MRG

**INDIVIDUAL DEFENDANTS' REPLY IN FURTHER SUPPORT OF
THEIR MOTION TO ALTER OR AMEND THE JUDGMENT**

Although KPM Analytics North America Corporation’s (“KPM”) “partial” opposition to Defendants Arnold Eilert, Robert Gajewski, Rachael Glenister, and Irvin Lucas’s (the “Individual Defendants”) motion to alter or amend the judgment purports to oppose *both* the Individual Defendants’ motion and Blue Sun Scientific, LLC and The Innovative Technologies Group & Co., Ltd’s (together the “Entity Defendants”) motion, KPM’s opposition does not actually oppose the Individual Defendants’ motion. Instead, the opposition focuses entirely on the Entity Defendants’ motion. This is, presumably, because there can be little doubt that the jury awarded KPM damages twice for the same harm caused by the Individual Defendants and there is little KPM can say to justify a double counting verdict.

At most, KPM argues that if the Court alters or remits the jury’s damages award, KPM has a right under the Seventh Amendment to either accept the remitted damages figure or choose to hold a new jury trial. (Opp. at 12). But the Individual Defendants have not moved for remittitur

and altering the jury's verdict to prevent obvious double-counting of damages would not in any way "trample on" KPM's right to a jury trial. It would merely correct a manifest error of law, while keeping intact the jury's verdict against the Individual Defendants, which Rule 59(e) permits without the need for holding a new trial.

Accordingly, the Individual Defendants' motion should be granted and the jury's verdict should be amended so that KPM only recovers once for the same injury.

Respectfully submitted,

ARNOLD EILERT, ROBERT GAJEWSKI,
RACHAEL GLENISTER, AND IRVIN
LUCAS



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Dated: July 26, 2023

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on July 26, 2023.



Dallin R. Wilson